

NICHOLAS C. DREHER, ESQ. 1299-0  
THEODORE D.C. YOUNG, ESQ. 5735-0  
CADES SCHUTTE LLC  
1000 Bishop Street  
Honolulu, Hawaii 96813  
Telephone: (808) 521-9200  
Facsimile: (808) 521-9210  
ndreher@cades.com  
tyoung@cades.com

FILED  
U.S. BANKRUPTCY COURT  
DISTRICT OF HAWAII  
JAN 21 PM 1:00  
EW

LISA G. BECKERMAN, ESQ.  
AKIN GUMP STRAUSS HAUER & FELD LLP  
590 Madison Avenue  
New York, New York 10022  
Telephone: (212) 872-1000  
Facsimile: (212) 872-1002  
lbeckerman@akingump.com

DAVID P. SIMONDS, ESQ.  
California State Bar No. 214499  
AKIN GUMP STRAUSS HAUER & FELD LLP  
2029 Century Park East, Suite 2400  
Los Angeles, California 90067  
Telephone: (310) 229-1000  
Facsimile: (310) 229-1001  
dsimonds@akingump.com

Proposed Counsel for Debtor  
and Debtor in Possession

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF HAWAII**

In re

HAWAIIAN AIRLINES, INC.,  
a Hawaii corporation,

Debtor.

**Case No. 03 - 0817**  
(Chapter 11)

**APPLICATION OF DEBTOR FOR ORDER  
AUTHORIZING THE RETENTION AND  
EMPLOYMENT OF AVITAS, INC. AS  
LEASE RESTRUCTURING**

ORIGINAL

39

**CONSULTANTS; EXHIBITS A AND B;  
PROPOSED ORDER**

Date: March 21, 2003  
Time: 2:30 pm  
Judge: Hon. Robert J. Faris

Hawaiian Airlines, Inc., as debtor and debtor in possession (the "Debtor"), by and through its undersigned proposed co-counsel, files this Application for an Order Authorizing the Retention and Employment of Avitas, Inc. ("Avitas") as lease restructuring consultants (the "Application"). In support of the Application, the Debtor submits (i) the Declaration of John W. Vitale, president and CEO of Avitas (the "Vitale Declaration"), a copy of which is attached hereto as Exhibit A and (ii) consultancy services agreement attached hereto as Exhibit B (the "Consulting Agreement") both of which are incorporated herein by reference. The Debtor respectfully represents as follows:

**I. JURISDICTION**

1. This Court has jurisdiction over the subject matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this District pursuant to 28 U.S.C. § 1409. The instant proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The Court possesses the requisite authority to grant the relief requested herein pursuant to section 327(a) and 328(a) of title 11 of the United States Code.

## **II. BACKGROUND**

2. On March 21, 2003 (the “Petition Date”), the Debtor filed a petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Hawaii (the “Bankruptcy Court”). Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtor is operating its businesses and managing its properties as a debtor in possession. No trustee, examiner or committee of creditors has been appointed in the Debtor’s chapter 11 case.

3. The Debtor was incorporated in January of 1929 under the laws of the Territory of Hawaii and is currently a subsidiary of Hawaiian Holdings, Inc. (“Hawaiian Holdings”),<sup>1</sup> a Delaware corporation whose common stock is traded on the American Stock Exchange and Pacific Exchange under the ticker symbol “HA.” As part of the regular Securities and Exchange Commission filings of Hawaiian Holdings, Hawaiian Holdings reports its financial and operating results with those of the Debtor on a consolidated basis.

### **The Debtor’s Business**

4. The Debtor is engaged primarily in the scheduled transportation of passengers, cargo and mail. The Debtor’s passenger airline business is its chief source of revenue. Principally all of the Debtor’s flights either originate or end in

the state of Hawaii. The Debtor provides passenger and cargo service from Hawaii, predominately Honolulu, to the cities of Los Angeles, Ontario, Sacramento, San Diego and San Francisco, California; Seattle, Washington; Portland, Oregon; Phoenix, Arizona; and Las Vegas, Nevada (the "Transpacific Routes"). The Debtor also provides non-stop service between and among the six major islands of the state of Hawaii (the "Interisland Routes") and weekly service to each of Pago Pago, American Samoa and Pepeeete, Tahiti in the South Pacific (the "South Pacific Routes"). Charter service is provided from Honolulu to Anchorage, Alaska (the "Charter Routes"). Based upon the Debtor's operating revenues, the Debtor is the largest airline headquartered in Hawaii.

5. Based on its unaudited results, the Debtor had a net loss of approximately \$58 million for the twelve months ended December 31, 2002 ("Year 2002") on operating revenue of approximately \$632 million for the same period. In comparison, for the twelve months ended December 31, 2001 ("Year 2001"), the Debtor reported net income of approximately \$5 million on operating revenue of approximately \$612 million for the same period. The Debtor's assets and liabilities, as of December 31, 2002, were approximately \$256 million and \$399 million, respectively. The Debtor's reported assets and liabilities, as of December 31, 2001, were approximately \$305 million and \$327 million, respectively.

---

<sup>1</sup> Hawaiian Holdings holds 49.1% of the outstanding common stock of the Debtor directly. The remaining 50.9% of

6. The Debtor is party to a network of agreements among airlines. Because of the interdependent nature of airline operations, coordination among airlines, provision of airline services, and efficient service by the airline industry to the traveling public, in general, would be virtually impossible without such agreements. Among other things, these agreements facilitate cooperation among airlines with respect to such critical activities as making reservations and transferring passengers, packages, baggage and mail among airlines.

### **The Debtor's Fleet**

7. Beginning in the fourth quarter of 1999, the Debtor initiated a plan to replace its entire fleet of McDonnell Douglas DC-9 aircraft used to service its Interisland Routes. This effort was completed in the first quarter of 2002, with the Debtor taking delivery of thirteen Boeing 717-200 aircraft (the "717 Aircraft").

8. Similarly, in the fourth quarter of 2001, the Debtor initiated a plan to replace, by June 2003, its entire fleet of McDonnell Douglas DC-10 aircraft (the "DC-10 Aircraft") used to service the Transpacific Routes, South Pacific Routes and Charter Routes (the "Overseas Routes") with sixteen Boeing 767-300ER aircraft (the "767 Aircraft"). To date, the Debtor has taken delivery of ten new and four used Boeing 767-300ER aircraft and has returned eleven DC-10 Aircraft leased from Continental Airlines, Inc. and a subsidiary of American Airlines, Inc.

---

the outstanding common stock of the Debtor is held by AIP, Inc. ("AIP"), a wholly-owned subsidiary of Hawaiian

("American"). The Overseas Routes are currently serviced by fourteen Boeing 767-300ER aircraft.

9. All of the Debtor's aircraft are leased from various lessors under either financing or operating leases. Three of the Debtor's 767 Aircraft are leased under fifteen-year operating leases with a subsidiary of Ansett Worldwide Aviation Services, Inc. ("Ansett") and were delivered to the Debtor in the fourth quarter of 2001. Four 767 Aircraft were delivered in 2002 under seven-year operating leases with International Lease Finance Corporation. Seven of the Debtor's 767 Aircraft are leased under eighteen-year operating leases from Ansett and a subsidiary of Boeing Capital Corporation ("Boeing"). Each of the 717 Aircraft is leased under an eighteen-year leveraged financing lease with Boeing. The Debtor's four remaining DC-10 Aircraft are leased under operating leases with American and B.C.I. Leasing.

### **Employees**

10. The Debtor has approximately 3,200 active employees, approximately 2,600 of which are employed on a full time basis. The majority of the Debtor's employees are covered by labor agreements with the International Association of Machinists and Aerospace Workers (AFL-CIO) ("IAM"); the Airline Pilots Association, International ("ALPA"); the Association of Flight Attendants

---

Holdings.

("AFA"); the Transport Workers Union ("TWU"); or the Employees of the Communications Section ("Communications Section"). Each of these labor agreements, other than the contract with the seven-member Communications Section, was renegotiated in 2000 or 2001, and will be subject to renegotiation again in 2004 or 2005.

### **Previous Restructurings**

11. On September 21, 1993, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the Bankruptcy Court (the "1993 Bankruptcy").<sup>2</sup> Following confirmation of the Debtor's plan of reorganization in the 1993 Bankruptcy on August 30, 1994, the Debtor successfully emerged from the 1993 Bankruptcy. Thereafter, on August 29, 2002, the Debtor was restructured from a public company into a wholly-owned subsidiary of Hawaiian Holdings and AIP (the "Restructuring"). As part of the Restructuring, the stockholders of the Debtor became stockholders of Hawaiian Holdings and Hawaiian Holdings assumed sponsorship of the Debtor's existing stock agreements. Prior to the Restructuring, the common stock of the Debtor was publicly traded on the American Stock Exchange and Pacific Exchange under Hawaiian Holdings' ticker symbol of "HA."

---

<sup>2</sup> United States Bankruptcy Court, District of Hawaii, Case No. 93-01074.

## **The Debtor's Current Financial Crisis**

12. The Debtor's current financial crisis was precipitated by a confluence of factors relating, in large part, to the depressed economic conditions of both the United States and Japan. These factors include: (a) decreased fare revenue, (b) high aircraft lease costs, (c) high labor costs and (d) increased insurance, security and fuel costs. Although the terrorist attacks of September 11, 2001 are one of the most obvious and publicized reasons for the Debtor's current financial crisis, it is the significant, though related, decline in the economies of the United States and Japan that has most contributed to the necessity of the Debtor's chapter 11 filing.

13. Following the events of September 11, 2001, the Debtor has seen a marked and dramatic reduction in the demand for travel to and within the islands of Hawaii. This reduced demand has been exacerbated by the flagging economies of the United States and Japan since that time. The demand for vacation travel, which historically has been the Debtor's greatest source of income, has been most affected by the economic decline. In order to attract passengers, airlines, including the Debtor, have been forced to lower their fares. The introduction of "low cost carriers," such as Jet Blue, has led to a further reduction in fare structure, as national airlines have been forced to reduce ticket prices to remain competitive. The combination of fewer ticket sales made at reduced fares continues to impact the Debtor's revenue and earnings negatively.



14. Beginning in late 1999, as discussed above, the Debtor began a refueling process under which its aging fleet of McDonnell Douglas DC-9 aircraft and DC-10 Aircraft would be completely replaced by the end of 2003. By July of 2001, the Debtor had entered into the last of its agreements with lessors that would provide the aircraft for this refueling. Although the terms of these agreements were considered to be fair and at market rates when agreed to, the subsequent and unforeseen decline in economic conditions in the United States and abroad have caused the terms of such leases to be highly unfavorable. Because its aircraft lease costs are grounded in economic assumptions that have failed to materialize, the Debtor has been forced to shoulder the crippling costs of over-market leases. For the Year 2002, expenses associated with the Debtor's aircraft leases made up 12% of its total operating expenses.

15. Similarly, because the Debtor's union agreements were renegotiated in 2000 and 2001, the Debtor's labor costs have not been in line with current economic conditions. Based upon market assumptions made in 2000 and pre-September 11, 2001, the Debtor's labor costs have exceeded what the Debtor could realistically maintain based upon its revenues. This relative increase in labor costs, as compared to revenue, has negatively impacted the Debtor's ability to remain a viable enterprise. For the Year 2002, the Debtor's labor costs made up 30% of its total operating expenses.

16. As a direct result of the events of September 11, 2001 and the long-standing international crises in the Middle East, the Debtor has seen increases in several of its cost centers. For instance, insurance rates associated with airline operations have increased substantially as compared to pre-September 11, 2001 rates. Because of increased airline security requirements, the Debtor also has been faced with increased security expenditures. Moreover, fuel costs, which made up approximately 14% of the Debtor's operating expenses for Year 2002, also have steadily increased during this period. These increased costs, in the face of declining revenues, have further weakened the Debtor's ability to succeed as a going-concern.

#### **Prepetition Activities**

17. The two largest controllable components of the Debtor's cost structure are labor and aircraft costs. These are, therefore, the two areas upon which the Debtor had focused prior to the Petition Date in trying to accomplish a successful out-of-court financial and operational restructuring. To that end, the Debtor has, particularly within the past year, been actively negotiating with both its aircraft lessors and labor unions to reduce its aircraft and labor costs, respectively. These negotiations have continued up until the Debtor's bankruptcy filing. On February 20, 2003, the Debtor's employees represented by IAM agreed to \$3.8 million in concessions. On March 6, 2003, the Debtor's employees represented by ALPA

reached an agreement with the Debtor with respect to approximately \$8 million in concessions. Similarly, on March 11, 2003, the Debtor's employees represented by AFA agreed to approximately \$3.5 million in concessions. Although the Debtor and its labor unions have made great progress in these negotiations, it now appears that the only practicable way for the Debtor to reorganize is under the protection afforded to it under the Bankruptcy Code, as the Debtor has not been successful in its attempts to negotiate significant concessions from its aircraft lessors.

### **III. RELIEF REQUESTED**

18. The Debtors desire to retain and employ Avitas as their lease restructuring consultants, to continue to perform lease consulting services as described herein and consistent with the terms and conditions of the attached Consulting Agreement. Prior to the Petition Date, the Debtor employed Avitas to assist in the Debtor's restructuring of its various aircraft leases. On account of this previous employment by the Debtor, Avitas has considerable knowledge concerning the Debtor and is already familiar with the Debtor's business affairs to the extent necessary for the scope of the proposed and anticipated services. Such experience and knowledge will be valuable to the Debtor in its efforts to reorganize. Accordingly, the Debtor wishes to retain Avitas to provide such

services during these cases. The Debtor respectfully requests that the Court authorize Avitas's retention as of the Petition Date.

### **Avitas's Qualifications**

19. Avitas has significant qualifications and experience in performing the scope of work described below and as more fully described in the Consulting Agreement. The Debtor believes that Avitas is well qualified and able to perform the lease consulting services for the Debtor in a cost-effective, efficient and timely manner.

### **Services to be Provided by Avitas**

20. The general nature and extent of services that Avitas may perform for the Debtor include, as may be requested by the Debtor and as may be agreed to by Avitas, the following:

- i. Negotiation Assistance
- ii. Market Research and Analysis
- iii. Lease Language Drafting and Analysis
- iv. Maintenance Reserve Analysis
- v. Industry Analysis
- vi. Expert Consultancy on Fleet Planning & the Commercial Aircraft Market
- vii. Desktop Appraisals
- viii. Extended Desktop Appraisals
- ix. Full Appraisals
- x. Aircraft Condition Inspections and Records Audits

- xi. Maintenance Cost Forecasting
- xii. Remarketing Assistance
- xiii. Expert Witness Testimony
- xiv. Data and Miscellaneous Research and Analysis

**Payment of Fees and Expenses**

21. Subject to the Court's approval and pursuant to the terms of the Vitale Declaration, Avitas intends to charge fees and seek reimbursement of expenses as set forth herein or in the Consulting Agreement.

22. Avitas will charge fees for its lease consulting services per paragraph 11 of the Vitale Declaration as described in the Consulting Agreement.

23. For consulting and expert testimony services, Avitas will charge fees based on its regular hourly rates. The rates by classification are, at present:

<u>Level/Task</u>	<u>Rate</u>
Managing Director (and above)	\$450
Directors	\$400
Analytic work	\$300
Clerical work	\$110

Additionally, aircraft inspections and appraisals will be billed as follows:

- On-site Physical Inspections and Audits: \$1,200 per manday;
- Desktop Appraisals: \$1,500 per type and \$150 per additional of same type;

- Extended Desktop Appraisals: \$2,000 per type and \$500 per additional of same type;
- Full Appraisals: \$3,500 per type and \$1,000 per additional of same type, plus additional physical inspections at the above rates.

24. In addition, Avitas's expenses, including but not limited to travel, lodging, food, special data, etc., will be included in the total amount billed. Avitas will maintain detailed, contemporaneous records of time incurred in connection with the fees charged based on hourly billing rates by category and nature of the service rendered.

25. Prior to the Petition Date, Avitas received a retainer of \$100,000 (the "Retainer") for services rendered or to be rendered. As of the Petition Date, approximately \$90,000 of the Retainer remained unapplied. The Debtor respectfully requests that Avitas be allowed to offset the Retainer against amounts due Avitas for services rendered and expenses incurred pursuant to its first interim fee application.

**Approval of Avitas's Fee Structure Pursuant  
to Section 328(a) of the Bankruptcy Code**

26. In accordance with the terms of this Application, the Vitale Declaration and the Consulting Agreement, the Debtor seeks approval of the fees described above (the "Fee Structure") pursuant to section 328(a) of the Bankruptcy Code. Section 328(a) provides, in relevant part, that a debtor "with the court's approval, may employ or authorize the employment of a professional person under

section 327 . . . on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, or on a contingent fee basis.” 11 U.S.C. §328(a). Section 328(a) therefore permits the Court to approve the proposed Fee Structure in connection with the Debtor’s retention of Avitas.

27. The Debtor believes that the Fee Structure is fair and reasonable and should be approved under Section 328(a) of the Bankruptcy Code. The Fee Structure appropriately reflects the nature of the services to be provided by Avitas and the fee structures typically utilized by professional services firms for similar work. In sum, therefore, the Debtor believes that the Fee Structure is fair and reasonable in light of (a) industry practice, (b) market rates charged for comparable services both in and out of the chapter 11 context, and (c) Avitas’s experience with respect to these services.

28. Notwithstanding the approval of the Fee Structure requested herein, all of Avitas’s fees in this case will be subject to approval of the Court upon proper application by Avitas in accordance with Sections 330 and 331 of the Bankruptcy Code, Bankruptcy Rule 2016, fee and expense guidelines established by the U.S. Trustee and any applicable interim compensation order. Pursuant to Section 328 of the Bankruptcy Code, however, the Court may not subsequently allow Avitas’s compensation on terms different from the approved Fee Structure unless such compensation “prove[s] to have been improvident in light of development not

capable of being anticipated at the time” the Fee Structure originally was approved.  
11 U.S.C. §328(a).

**Disclosure Concerning Possible Conflicts**

29. To the best of Mr. Vitale’s and Avitas’s knowledge, after reasonable inquiry, other than in connection with this case, Avitas has no connection with the Debtor, any creditor or other parties in interest, or their respective attorneys or accountants, or the United States Trustee or any of its employees, except as described herein, in the Vitale Declaration and in Exhibit A to the Vitale Declaration.

30. Avitas is a large professional services firm and, as such, has relationships with many clients that may be creditors of, affiliates of, or potentially adverse to the Debtor or otherwise involved in this chapter 11 case. In the ordinary course of business, Avitas may have business relationships in unrelated matters with its principal competitors.

31. As described in the Vitale Declaration, Avitas has undertaken a detailed search to determine whether it has had any relationships with the following entities (collectively, the “Interested Parties”):

- i. the Debtor;
- ii. the directors and officers of Hawaiian Airlines, Inc.;
- iii. the significant unsecured creditors, noteholders and related parties;



- iv. the significant lessors;
- v. the significant secured lenders;
- vi. the issuer and beneficiaries of significant letters of credit;
- vii. the significant employee-related parties;
- viii. the significant spare parts vendors;
- ix. the parties to significant litigation;
- x. the significant equity security holders, as identified to Avitas and other related parties; and
- xi. the significant professionals for the Debtors.

32. The identities of the Interested Parties were provided to Avitas by the Debtor and are set forth on Exhibit B to the Vitale Declaration. To the extent that Avitas's research of its relationships with the Interested Parties indicated that Avitas has provided services, or currently provides services to these entities in matters unrelated to this chapter 11 case or that Avitas has other relationships with such partners, the identities of these entities are set forth in the Vitale Declaration or Schedule A to the Vitale Declaration.

33. Despite the efforts described above to identify and disclose Avitas's connections with parties in interest in this case, Avitas is unable to state with certainty that every client relationship or other connection has been disclosed. If Avitas discovers additional information that it determines requires disclosure, Avitas will file a supplemental disclosure with the Court promptly.

34. To the best of the Debtor's knowledge, information and belief, Avitas represents no interest adverse to the Debtor or its respective estates in the matters for which Avitas is proposed to be retained. Accordingly, the Debtor believes that Avitas is a "disinterested person", as defined in Section 101(14) of the Bankruptcy Code and as required by Section 327(a) of the Bankruptcy Code. The Debtor submits that the employment of Avitas would be in the best interest of the Debtor and its respective estates and creditors.

#### **Interim and Final Approval**

35. The Debtor seeks approval of this Application on an interim basis; provided, however, that any party in interest shall have twenty (20) days from the date of entry of the order approving this Application (the "Order") to object to the Debtor's retention and employment of Avitas. If no objection is filed and received by the Debtor and Avitas in such time, the Order shall be deemed final on the twenty-first (21<sup>st</sup>) day after the date of the Order and Avitas's retention and employment on a permanent basis shall be made effective nunc pro tunc to the Petition Date.

36. If a timely objection is received, the Court will set a hearing date and provide notice of such hearing to the appropriate parties.

### **Notice**

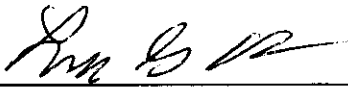
37. No trustee, examiner or creditors' committee has been appointed in the Debtor's chapter 11 case. Notice of this Application has been provided to: (i) the Office of the United States Trustee for District of Hawaii; (ii) parties appearing on the Debtor's list of creditors holding the twenty largest unsecured claims; (iii) the Securities and Exchange Commission; and (iv) the Internal Revenue Service. Given the circumstances, the Debtor submits that no other or further notice need be given.

38. No previous request for the relief sought herein has been made to this or any other court.

WHEREFORE, the Debtor respectfully requests that the Court enter an order authorizing the retention and employment of Avitas as lease restructuring

consultants for the Debtor as of the Petition Date, and grant such other and further relief as this Court may deem just and proper.

Dated: Honolulu, Hawaii, March 21, 2003

By:   
NICHOLAS C. DREHER, ESQ.  
THEODORE D.C. YOUNG, ESQ.  
CADES SCHUTTE LLC

and

LISA G. BECKERMAN, ESQ.  
DAVID SIMONDS, ESQ.  
AKIN GUMP STRAUSS HAUER & FELD LLP

Proposed Counsel for Debtor and Debtor in  
Possession

Nicholas C. Dreher, Esq.  
Theodore D.C. Young, Esq.  
CADES SCHUTTE LLC  
1000 Bishop Street  
Honolulu, Hawaii 96813  
Telephone: (808) 521-9200  
Facsimile: (808) 521-9210  
ndreher@cades.com  
tyoung@cades.com

Lisa G. Beckerman, Esq.  
AKIN GUMP STRAUSS HAUER & FELD LLP  
590 Madison Avenue  
New York, New York 10022  
Telephone: (212) 872-1000  
Facsimile: (212) 872-1002  
lbeckerman@akingump.com

David P. Simonds, Esq.  
California State Bar No. 214499  
AKIN GUMP STRAUSS HAUER & FELD LLP  
2029 Century Park East, Suite 2400  
Los Angeles, California 90067  
Telephone: (310) 229-1000  
Facsimile: (310) 229-1001  
dsimonds@akingump.com

Proposed Counsel for Debtor  
and Debtor in Possession

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF HAWAII**

In re	}	<b>Case No. 03 - 00817</b> (Chapter 11)
HAWAIIAN AIRLINES, NC., a Hawaiian corporation,		
Debtor.	}	<b>DECLARATION OF JOHN W. VITALE IN</b>
		<b>SUPPORT OF APPLICATION FOR ORDER</b>
		<b>AUTHORIZING EMPLOYMENT AND</b>
		<b>RETENTION OF AVITAS, INC. AS LEASE</b>

---

**EXHIBIT "A"**

} **RESTRUCTURING CONSULTANTS**

} Date: March 21, 2003

} Time: 2:30 p.m.

} Judge: Hon. Robert J. Faris

---

I, John W. Vitale, declare as follows:

1. I am President and CEO of Avitas, Inc. ("Avitas"), which firm maintains an office at 14520 Avion Parkway, Suite 220, Chantilly, VA 20151, and I am authorized to execute this declaration on behalf of Avitas.

2. On March 21, 2003 (the "Petition Date"), Hawaiian Airlines, Inc. (the "Debtor") filed a voluntary petition for relief under chapter 11, title 11 of the United States Code (the "Bankruptcy Code").

3. This Declaration is prepared in connection with the Application of Debtor for Order Authorizing the Retention and Employment of Avitas, Inc. as Lease Restructuring Consultants (the "Retention Application"), and sets forth the statements required under Rules 2014(a) and 2016(b) of the Federal Rules of Bankruptcy Procedure.

4. Except as specifically set forth on the attached Exhibit A, neither I nor Avitas as a firm, to the best of my knowledge, have any connection with any

creditor or other parties in interest, or their respective attorneys or accountants, or the United States Trustee or any of its employees.

5. In the few weeks prior to the Petition Date, Avitas represented the Debtor as consultants, which included providing consulting services relating to the leased aircraft in their fleet. As a result of this prior representation, Avitas is intimately familiar with the complex issues that have arisen and are likely to arise in connection with the Debtor's lease restructuring issues. Such prior experience will enable efficient and economic representation of the Debtor and will facilitate the completion of the Debtor's reorganization.

6. For prepetition services rendered, Avitas is owed approximately \$0.

7. As part of its diverse practice, Avitas and certain of its principals and employees have in the past represented, currently represent and may in the future represent entities that are claimants, equity interest holders, or other parties in interest in these cases in matters totally unrelated to the pending chapter 11 cases. In addition, Avitas may have in the past or may currently be representing other professionals involved in this case in matters unrelated to this case. Based on our current knowledge of the professionals involved, and to the best of my knowledge, Avitas does not represent or have a relationship with any attorneys, accountants, financial consultants or investment bankers which would be adverse to the Debtor or its estate.

8. Certain directors, and employees of Avitas have in the past represented, presently represent, and likely in the future will represent corporate entities and individuals that are either creditors or affiliates of the Debtor in matters unrelated to this case. However, Avitas will not provide any services to any of these entities in connection with any matter that arises in this Chapter 11 case. Avitas believes that its representation of such creditors or equity security holders in such unrelated matters will not affect its representation of the Debtor in this proceeding as actuaries.

9. To check and clear potential conflicts of interest in this case, Avitas researched its client database to determine whether it had any connection with the following entities listed on Exhibit B attached hereto.

10. After performing such conflict checks, Avitas has determined that it has not represented any creditors or affiliates in matters related or unrelated to this chapter 11 case, except as set forth on Exhibit A attached hereto.

11. Subject to Court approval, and in accordance with sections 330(a) and 331 of the Bankruptcy Code, Avitas will seek payment for compensation on an hourly basis, plus reimbursement of actual and necessary expenses. Avitas's customary hourly rates charged to both bankruptcy and non-bankruptcy clients, subject to periodic adjustments to reflect economic and other conditions, are:



<u>Level/Task</u>	<u>Rate</u>
Managing Director (and above)	\$450
Directors	\$400
Analytic work	\$300
Clerical work	\$110

These hourly rates are customarily adjusted at the beginning of the year.

12. In connection with the reimbursement of actual and necessary expenses, it is Avitas's policy to charge its clients in all areas of practice for expenses incurred in connection with the client's representation. These expenses and charges include, among other things, photocopying, travel expenses, certain secretarial and other overtime expenses, long distance telephone calls, postage, express mail and messenger charges, expenses for "working meals" and telecopier charges. Avitas will charge the Debtor for these expenses in a manner and at rates consistent with charges generally made to its other clients.

13. No promises have been received by Avitas nor any partner, counsel or associate thereof as to compensation or payment in connection with these cases other than in accordance with the provisions of the Bankruptcy Code. Avitas has no agreement with any other entity to share with such entity any compensation received by in connection with this chapter 11 case.

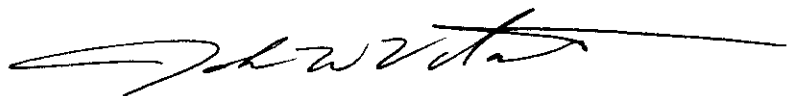
14. Based upon the information available to me, neither I, Avitas, nor any director, principal or employee thereof, insofar as I have been able to ascertain, holds or represents any interest adverse to the Debtor or its estate in the matters for which Avitas seeks to be engaged. Accordingly, I believe that Avitas is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code.

15. Avitas represents that the foregoing constitutes a complete and full disclosure of all prior and current representation of clients which have any connection to this case, and that it has made an effort to discover any conflicts. However, Avitas reserves the right to supplement and amend this Declaration should it discover further pertinent relationships that require disclosure in this case.

16. The retention of Avitas to perform the services described in the Retention Application is in the best interests of the Debtor and the Debtor's estate.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 19<sup>th</sup> day of March, 2003.



---

John W. Vitale  
President

## EXHIBIT A

### AVITAS Possible Conflicts with Hawaiian Airlines 2002/2003 Clients

<u>Name</u>	<u>Project</u>	<u>Revenue</u>
1 American Airlines	Appraisals	Less than 1% of annual revenue
2 BCI Aircraft Leasing	Appraisals & Inspections	Less than 1% of annual revenue
3 Delta Air Lines	Appraisals, BlueBook	Less than 1% of annual revenue
4 GECAS	Appraisals, BlueBook	Less than 1% of annual revenue
5 ILFC	Appraisals	Less than 1% of annual revenue
6 Rolls-Royce North America	Appraisals, BlueBook	Less than 1% of annual revenue
7 Transamerica	Appraisals & Inspections, BlueBook	Less than 1% of annual revenue
8 Boeing	BlueBook	Less than 1% of annual revenue
9 Bank of America	BlueBook	Less than 1% of annual revenue
10 Pratt & Whitney	BlueBook	Less than 1% of annual revenue

**EXHIBIT A (continued)**

**AVITAS Personnel Possible Conflicts with Hawaiian Airlines**

<u>Name</u>	<u>Employee Status</u>	<u>Relationship</u>	<u>Comment</u>
1 Jarvis, Steve	Full Time	British Airways' Executive Club Starwood Preferred Guest	Frequent flyer/guest accounts Frequent flyer/guest accounts
2 Kelly, Doug	Full Time	Bank of America VISA	Checking, Savings, Home Mortgage Credit cards
3 Silverman, Dan	Full Time	American Airlines British Airways Delta Air Lines Jet Blue Airlines Lufthansa Starwood Hotels	Frequent flyer/guest accounts Frequent flyer/guest accounts Frequent flyer/guest accounts Frequent flyer/guest accounts Frequent flyer/guest accounts Frequent flyer/guest accounts
4 Barnes, Sean	Full Time	VISA Marine Corps	Credit cards Ex-Marine
5 Yacur, Gary	Full Time	FlightSafety	Wife cousin's husband employed at FlightSafety
6 Hale, Jerry	Associate	Todd Cole, Cole & Wilds Assoc.	Worked with Todd Cole during Eastern liquidation between Jan. 1991 and Mar. 1995
7 Higgins, Kim	Full Time	VISA	Credit cards
8 Archambault, Kevin	Full Time	Delta Air Lines	Brother works as a mechanic
9 Skilman, Steve	Associate	Atlantic Coast Airlines	Currently employed
10 Blackman, Susanna	Part Time	Bank of America	Checking account
11 Pilarski, Adam	Full Time	VISA	Credit card
12 Stern, Michael	Associate	Bank of America GE Capital Heller	Mortgage Former employee Former employee
13 Vitale, John	Full Time	VISA	Credit cards

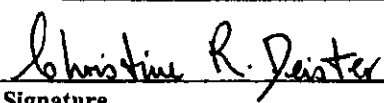
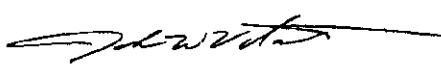


# SHORT FORM AGREEMENT - CONSULTANCY SERVICES

<b>AVITAS</b>	AVITAS, Inc.	<b>Address:</b> 14520 Avion Parkway, Suite 220 Chantilly, VA 20151 Ph: (703) 476-2300 Fax: (703) 860-5855
<b>Customer</b>	<b>Company:</b> Hawaiian Airlines	<b>Address:</b>
	<b>Primary Contact:</b> Ms. Christine Deister Chief Financial Officer	<b>telephone/fax/e-mail:</b> Ph: 808-835-3030 Fax: E-mail: <a href="mailto:christine_deister@hawaiianair.com">christine_deister@hawaiianair.com</a>
<b>Project Name</b>	Consultancy Services – Lease restructuring	
<b>Aircraft</b>	717s and 767s	
<b>Timing</b>	This proposal will be valid for seven (7) days from the date submitted.	
<b>Scope of Work (hereinafter called the Work)</b>	<p>AVITAS will be available, as needed and directed by the Customer, to perform the following services:</p> <ul style="list-style-type: none"> <li>- Negotiation Assistance</li> <li>- Market Research and Analysis</li> <li>- Lease Language Drafting and Analysis</li> <li>- Maintenance Reserve Analysis</li> <li>- Industry Analysis</li> <li>- Expert Consultancy on Fleet Planning and the Commercial Aircraft Market</li> <li>- Desktop Appraisals (as defined by ISTAT)</li> <li>- Extended Desktop Appraisals (as defined by ISTAT)</li> <li>- Full Appraisals (as defined by ISTAT)</li> <li>- Aircraft Condition Inspections and Records Audits</li> <li>- Maintenance Cost Forecasting</li> <li>- Remarketing Assistance</li> <li>- Expert Witness Testimony</li> <li>- Data and Miscellaneous Research &amp; Analysis</li> </ul>	
<b>Remuneration</b>	<p>The hourly rate for our consulting and expert testimony work is \$450 for our most senior consultants (Managing Director and above), \$400 for Directors, \$300 for all other analytical work, and \$110 for clerical work.</p> <p>Aircraft inspections and appraisals will be provided according to the following schedule of fees:</p> <p>On-site Physical Inspections and Audits.....\$1,200 per manday  Desktop Appraisals.....\$1,500 per type and \$150 for additional of same type  Extended Desktop Appraisals.....\$2,000 per type and \$500 for additional of same type  Full Appraisals.....\$3,500 per type and \$1,000 for additional of same type,  plus physical inspections at the above rates</p> <p>The Customer will also be billed for direct expenses such as travel, lodging, food, special data, etc. When traveling, a minimum of eight (8) hours will be billed per day. All fees and direct expenses will be billed monthly.</p>	

## EXHIBIT "B"

**AVITAS®****SHORT FORM AGREEMENT - CONSULTANCY SERVICES**

<b>Payment Terms</b>	<p>A retainer deposit of \$100,000 will be required prior to the commencement of work. A statement will be issued approximately monthly, outlining charges against the retainer balance. Additional retainer deposits may be required periodically. A positive retainer balance will be maintained throughout this assignment. Any retainer balance remaining at the termination of this agreement will be returned to the Customer, <i>within five (5) business days of such termination.</i> <span style="float: right;">CRJ</span></p> <p>Wire transfer may be made as set forth below:</p> <p style="text-align: right;">             Bank Name: SunTrust Bank, Richmond, VA USA              Bank ABA#: 061000104              Attn: Northern Region              Beneficiary: AVITAS, Inc.              Account #: 202144933           </p>
<b>Specification of Fees, Expenses and Additional Costs</b>	<p>An additional \$50 will be charged for report preparation and shipping. The Customer will also be billed for any other direct expenses incurred at the direction of the Customer. Direct expenses will be billed as incurred, without mark-up.</p>
<b>Special Conditions</b>	<p><i>If additional space is needed, please use attachments:</i></p>
<p>This Agreement consist of this cover page, the General Terms and Conditions overleaf and any other documents referred to herein, and constitutes the entire agreement between the parties which shall supersede and invalidate all prior representations relating to the subject matter hereof. No amendment and/or variation to the Agreement is valid unless duly signed by both parties.</p>	
<p><b>for Customer:</b></p> <p>Date: <u>2-28-2003</u></p> <p>        Signature</p> <p><u>CHRISTINE R. DEISTER, EXEC.V.P., CFO</u>        Name and title (printed) <span style="float: right;">✓ TREASURER</span></p>	<p><b>for AVITAS:</b></p> <p>Date: <u>February 27, 2003</u></p> <p>        Signature</p> <p><u>John W. Vitale, President &amp; CEO</u>        Name and title</p>



## GENERAL TERMS AND CONDITIONS - CONSULTANCY SERVICES

**1. Work Execution**

- 1.1 AVITAS shall execute the Work in a highly professional manner and in accordance with the provisions of this Agreement.
- 1.2 Any documented error or defect in the Work will be rectified by AVITAS within a reasonable period of time at AVITAS's sole cost, provided said error or defect is not attributable to the Customer or Customer's subcontractor and AVITAS is duly notified of said errors or defects within six months after completion of the Work.

**2. Safety, Health and Environment (SHE)**

- 2.1 The Customer shall inform AVITAS of any real or potential SHE hazard which may be relevant to or involved or introduced in the Work and/or any necessary safety measures required for the Work, prior to or during the performance of the Work.
- 2.2 Whenever AVITAS undertakes work on site, the Customer shall provide all adequate safety measures to ensure a working environment that is safe and in accordance with all relevant legislation.

**3. Remuneration**

- 3.1 The Customer shall pay AVITAS for the Work, as specified in this Agreement. Payment shall be made to AVITAS's bank account as stated on the invoice unless otherwise specified in this Agreement.
- 3.2 Prices quoted are exclusive of VAT, any other local sales taxes and/or withholding taxes.
- 3.3 For fees payable in excess of any retainer balance, payment shall be made within 30 days after receipt of the invoice. For late payment interest will be charged at a rate of 1.5% per month or part thereof.

**4. Variations**

- 4.1 The Customer shall be entitled to request additional work (hereinafter referred to as "variations") under this Agreement.
- 4.2 All variation requests shall be in writing, clearly defining the variation required, including but not limited to remuneration and time schedule.
- 4.3 No variation shall be implemented before the parties have reached an agreement regarding the extent and the remuneration hereto and the revised time schedule.

**5. Termination**

- 5.1 The Customer shall have the right to terminate this Agreement at any time upon 30 days written notice to AVITAS.
- 5.2 In the event of termination according to article 5.1 above, the Customer shall reimburse AVITAS for all Work performed up to the date of termination and all costs and expenses reasonably incurred by AVITAS as a consequence of such termination.
- 5.3 Both Customer and AVITAS shall have the right to terminate this Agreement with immediate effect if the other party is in material breach of its obligations hereunder, if the other party goes bankrupt or enters into liquidation proceedings.

**6. Confidentiality**

- 6.1 The Customer and AVITAS mutually agree not to disclose to any third party without the prior written consent of the other party, any information obtained from the other party related to this Agreement.
- 6.2 However, each party shall be free to disclose such information as is:
- known by it prior to the information being disclosed by the other party, or
  - part of the public domain at the time of disclosure, or
  - required to be disclosed by public authorities in accordance with applicable law.
- 6.3 Both parties may disclose information to their subcontractors without prior written consent to the extent necessary to complete the Work, provided that a written confidentiality agreement reflecting the principles above is entered into with such subcontractors.
- 6.4 The obligations of both parties as defined in this article shall apply notwithstanding the completion of the Work or termination of this Agreement.

**7. Intellectual Property Rights**

- 7.1 AVITAS shall have full ownership rights to the deliverables developed by AVITAS as part of the Work, unless otherwise specified. The Customer shall, subject to this Agreement on a royalty free basis, have free use of such deliverables.

- 7.2 Any writings (including but not limited to photographs, diagrams, models and computer programs) developed during the course of the Work, which are not part of the deliverables, shall be the exclusive property of AVITAS.

- 7.3 Notwithstanding the above, both parties agree that any intellectual property right in existence prior to this Agreement (either as a filed application or already obtained), shall remain the sole property of the originating party.

**8. Liability and Indemnity**

- 8.1 AVITAS shall indemnify, defend and hold harmless the Customer from and against any and all losses, claims and liabilities related to or arising out of this Agreement as a result of:

- death of or personal injury to any employees, representatives or subcontractor of AVITAS,
- the loss of or damage to property of AVITAS or its employees, representatives or subcontractors,
- all consequential, special or incidental costs, losses or damages (whether direct or indirect) suffered by AVITAS,

howsoever caused, excepting only the wilful misconduct of the Customer.

- 8.2 The Customer shall indemnify, defend and hold harmless AVITAS from and against any and all losses, claims and liabilities related to or arising out of this Agreement as a result of:

- death of or personal injury to any employee, representatives or subcontractor of the Customer,
- the loss of or damage to property of the Customer or its employees, representatives or subcontractors,
- all consequential, special or incidental costs, losses or damages (whether direct or indirect) suffered by the Customer,

howsoever caused, excepting only the wilful misconduct of AVITAS.

- 8.3 Each party shall be responsible for and accept full liability for its own acts or omissions leading to the loss of or damage to any third party.

- 8.4 Except as stated in articles 1.2 and 8.1 above, AVITAS's maximum cumulative liability arising out of or related to this Agreement shall be limited to an amount equal to the remuneration paid to AVITAS by the Customer under this Agreement or USD 300,000 (or the equivalent thereto), whichever is the less. ✓

- 8.5 If either party becomes aware of any incidents likely to give rise to a claim under the above indemnities, he shall notify the other party immediately.

**9. [Intentionally left blank]****10. Force Majeure**

Delay in or failure of performance of either party hereto shall not constitute a default hereunder or give rise to any claim for damage if and to the extent such delay or failure is caused by any event beyond the control of the party affected which the party had no reasonable way of preventing or grounds to anticipate, including but not limited to an act of war, natural disaster, fire, explosion, labour dispute. The affected party shall immediately notify the other party in writing of the causes and expected duration of any such occurrence.

**11. Law**

- 11.1 This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Virginia

- 11.2 Any dispute arising in relation to or as a consequence of this Agreement, which cannot be settled amicably through negotiations between the parties, shall be finally settled by arbitration in Virginia, in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

✓ Limitations on liability should be mutual or no limitations at all.

**OAKTREE CAPITAL MANAGEMENT  
KALAKAUA LAND RPT APPEAL  
Material Documents**

---

**13725-5  
File 3C**

- 22. Spreadsheet prepared by J. Hallstrom showing leasehold sales in 2001-2002, along with allocation of recently agreed to leased-fee prices
- 23. TY 2002: Amended Notices of Property Assessment



IN THE UNITED STATES BANKRUPTCY COURT

DISTRICT OF HAWAII

In re ) **Case No. 03 -**  
 ) (Chapter 11)  
HAWAIIAN AIRLINES, INC., )  
a Hawaii corporation, ) **INTERIM ORDER, PURSUANT TO**  
 ) **SECTIONS 327(a) AND 328(a) OF THE**  
Debtor. ) **BANKRUPTCY CODE, AUTHORIZING**  
 ) **THE RETENTION AND EMPLOYMENT**  
 ) **OF AVITAS, INC. AS LEASE**  
 ) **RESTRUCTURING CONSULTANTS**  
 )  
 )  
 ) Date: March 21, 2003  
 ) Time: 2:30 p.m.  
 ) Judge: Hon. Robert J. Faris  
 )  
\_\_\_\_\_ )

Upon consideration of the application dated March 21, 2003 (the "Application") of Hawaiian Airlines, Inc., as debtor and debtor in possession (the "Debtor"), seeking an order pursuant to section 327(a) and section 328(a) of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") authorizing and approving the retention and employment of Avitas, Inc. ("Avitias") as lease restructuring consultants to the Debtor, effective as of the commencement of the Debtor's chapter 11 case, all as more fully set forth in the Application; and upon consideration of the Declaration of John W. Vitale, the President and CEO of the firm of Avitas (the "Vitale Declaration"); and the Court being satisfied, based on the representations made in the Application and the Vitale

Declaration that said firm represents no interest adverse to the Debtor's estate with respect to the matters upon which it is to be engaged, that it is a "disinterested person," as that term is defined under section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code, and that the Debtor's employment of Avitas is necessary and would be in the best interests of the Debtor and its estate; and it appearing that adequate and sufficient notice of the Application has been given; and sufficient cause appearing therefore, it is

ORDERED that the Application is approved upon the terms set forth herein; provided, however, that any party in interest shall have twenty (20) days from the date hereof to object to the Debtor's retention and employment of Avitas. If no objection is filed and received by the Debtor and Avitas in such time, this Order shall be deemed final on the twenty-first (21<sup>st</sup>) day after the date hereof. If a timely objection is received, the Court will set a hearing date and provide notice of such hearing to the appropriate parties; and it is further

ORDERED that if no objections to Avitas's retention and employment on a permanent basis are timely filed, served and received in accordance with this Order, this Court may enter a final order without further notice or hearing, and the Application shall be granted in its entirety, and Avitas's retention and employment on a permanent basis shall be made effective nunc pro tunc to the date of the commencement of this chapter 11 case; and it is further

ORDERED that notice of the Application as provided therein shall be deemed good and sufficient notice of such Application; and it is further

ORDERED that, in accordance with section 327(a) and section 328(a) of the Bankruptcy Code, the Debtor is hereby authorized to employ and retain Avitas as lease restructuring consultants to the Debtor, effective as the commencement of this chapter 11 case in accordance with Avitas's normal hourly rates and expense reimbursement policies as set forth in the Application upon the terms and conditions set forth in the Application; and it is further

ORDERED that Avitas may apply for compensation and reimbursement in accordance with the procedures set forth in sections 330 and 331 of the Bankruptcy Code and applicable Federal Rules of Bankruptcy Procedure, the Bankruptcy Rules, the Local Rules for the District of Hawaii, and further orders of this Court.

Dated: Honolulu, Hawaii, \_\_\_\_\_, 2003.

---

UNITED STATES BANKRUPTCY JUDGE

-----  
In re Hawaiian Airlines, Inc., Chapter 11, Case No. 03- 00817 ;  
INTERIM ORDER, PURSUANT TO SECTIONS 327(a) AND 328(a) OF THE  
BANKRUPTCY CODE, AUTHORIZING THE RETENTION AND  
EMPLOYMENT OF AVITAS, INC. AS LEASE RESTRUCTURING  
CONSULTANTS